



# Social Partnership and Public Procurement (Wales) Act 2023

2023 asc 1

## PART 3

### SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT

#### CHAPTER 2

##### SOCIALLY RESPONSIBLE PROCUREMENT DUTY

*Social public workforce clauses and code of practice on outsourcing public services*

#### **32 Public services outsourcing and workforce code**

- (1) For the purposes of maintaining or improving the quality of public services or other functions outsourced by contracting authorities, the Welsh Ministers must prepare and publish a code of practice (the “public services outsourcing and workforce code”) about employment and pensions matters related to outsourcing services contracts.
- (2) The Welsh Ministers may revise the code and must publish the revised code.
- (3) In preparing the code or any revision the Welsh Ministers must consult such other persons as they consider appropriate.
- (4) The Welsh Ministers must lay a copy of the code and any revision before the Senedd.

#### **33 Social public workforce clauses in outsourcing services contracts**

The public services outsourcing and workforce code must include model contract clauses (“social public workforce clauses”), which in particular—

- (a) are designed to ensure that members of staff employed by contracting authorities in providing services, or undertaking functions, to be outsourced

- will, if they wish, become employed by the person providing those services, or undertaking those functions, when they are outsourced (“transferring staff”);
- (b) are designed to protect the terms and conditions and pensions arrangements of transferring staff;
  - (c) are designed to ensure that the terms and conditions of other members of staff employed by the person providing the services, or undertaking the functions, who are involved in providing those services, or undertaking those functions, are no less favourable overall than those of transferring staff, and that the pensions arrangements of those other members of staff are reasonable;
  - (d) make provision supplementary to the matters referred to in paragraphs (a) to (c).

### **34 Social public workforce clauses in subcontracts**

- (1) Subsection (2) applies if a contracting authority intends to include social public workforce clauses in an outsourcing services contract it agrees with an economic operator (a “contractor”) (the authority having considered whether to do so in accordance with section 26(1)(b)).
- (2) The authority must take all reasonable steps to ensure that the obligations in the social public workforce clauses are implemented where the contractor enters into a subcontract with any other economic operator (a “subcontractor”).
- (3) Examples of the reasonable steps that could be taken under subsection (2) include—
  - (a) ensuring that social public workforce clauses having the same or substantially the same effect as those in the outsourcing services contract are included in any subcontract—
    - (i) the contractor enters into with a subcontractor, and
    - (ii) the subcontractor enters into with a subsequent contractor (and so on);
  - (b) ensuring that the contracting authority may enforce the obligations in social public workforce clauses under the outsourcing services contract or under a subcontract;
  - (c) requiring the contractor to obtain the contracting authority’s consent before entering into a subcontract, with consent being made conditional upon social public workforce clauses having the same or substantially the same effect as those included in the outsourcing services contract being included in any subcontract;
  - (d) requiring the contractor to inform the contracting authority if it intends to enter into a subcontract which does not include social public workforce clauses having the same or substantially the same effect as those included in the outsourcing services contract;
  - (e) requiring the contractor to monitor the extent any obligations in social public workforce clauses are implemented where the contractor has entered into a subcontract with any other economic operator.

### **35 Social public workforce clauses: notifying the Welsh Ministers**

- (1) A contracting authority must notify the Welsh Ministers if, in relation to an outsourcing services contract—

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- (a) the authority does not intend to include social public workforce clauses in the contract (despite having considered whether to do so in accordance with section 26(1)(b));
  - (b) social public workforce clauses are not included in the contract (despite the authority having taken all reasonable steps in accordance with section 26(1)(c)(i));
  - (c) there is no process in place for ensuring that obligations in social public workforce clauses are implemented (despite the authority having taken all reasonable steps in accordance with section 26(1)(c)(ii));
  - (d) there is no process in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted (despite the authority having taken all reasonable steps in accordance with section 34(2)).
- (2) A notification under subsection (1) must be made as soon as reasonably practicable and must give the authority's reasons.

### **36 Social public workforce clauses: Welsh Ministers' response**

- (1) Where the Welsh Ministers receive a notification under section 35(1), they must—
- (a) publish a summary of the notification, and
  - (b) consider whether they are satisfied with the reasons given in the notification.
- (2) In considering whether they are satisfied with the reasons, the Welsh Ministers may—
- (a) consult the contracting authority;
  - (b) by notice require the authority to provide any documents or other information as the Welsh Ministers may require for the purposes of subsection (1) in such form or manner as may be specified in the notice;
  - (c) provide the SPC procurement subgroup with a copy of the notification under section 35(1) and any documents or other information received under paragraph (b);
  - (d) consult the SPC procurement subgroup.
- (3) If, following consideration under subsection (1), the Welsh Ministers are satisfied, they must publish a summary of their reasons for being satisfied.
- (4) If, following consideration under subsection (1), the Welsh Ministers are not satisfied, they may direct the contracting authority to take all reasonable steps to—
- (a) include social public workforce clauses in the outsourcing services contract,
  - (b) put processes in place for ensuring that obligations in social public workforce clauses are implemented, or
  - (c) put processes in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted.
- (5) Where the Welsh Ministers give a direction under subsection (4), they must—
- (a) inform the SPC procurement subgroup that they have given the direction, and
  - (b) publish the direction.
- (6) Where the Welsh Ministers do not give a direction under subsection (4) despite not being satisfied, they must—
- (a) inform the SPC public procurement subgroup that they have not given a direction, and

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- (b) publish a summary of—
  - (i) their reasons for not being satisfied, and
  - (ii) their reasons for not giving a direction despite not being satisfied.
- (7) The Welsh Ministers must take any action taken under subsections (2)(a) or (b) as soon as reasonably practicable.
- (8) A contracting authority must provide any documents or other information it is required to provide under subsection (2)(b) as soon as reasonably practicable.
- (9) Nothing in this section requires the Welsh Ministers to publish information which, following consultation with the appropriate contracting authority, the Welsh Ministers consider would be exempt from disclosure were it to be subject to a request for information under the [Freedom of Information Act 2000 \(c. 36\)](#).

### **37 Social public workforce clauses: Welsh Ministers' contracts**

- (1) The Welsh Ministers must publish a statement if, in relation to an outsourcing services contract—
  - (a) they do not intend to include social public workforce clauses in the contract (despite having considered whether to do so in accordance with section 26(1)(b));
  - (b) social public workforce clauses are not included in the contract (despite having taken all reasonable steps in accordance with section 26(1)(c)(i));
  - (c) there is no process in place for ensuring that obligations in social public workforce clauses are implemented (despite having taken all reasonable steps in accordance with section 26(1)(c)(ii));
  - (d) there is no process in place for ensuring that obligations in social public workforce clauses are implemented where the contract is subcontracted (despite having taken all reasonable steps in accordance with section 34(2)).
- (2) A statement under subsection (1) must be made as soon as reasonably practicable and give the Welsh Ministers' reasons.